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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PHILLIP C. SANDERS,

Plaintiff and Appellant,

v.

NARCOTICS ANONYMOUS WORLD  
SERVICES, INC.,

Defendant and Appellant.

D053349

(Super. Ct. No. ECU02742)

APPEAL from a judgment of the Superior Court of Imperial County, Jeffery B. Jones, Judge. Affirmed.

Phillip C. Sanders appeals the dismissal of his action against Narcotics Anonymous World Services, Inc. (NAWS). Sanders does not challenge the trial court's finding he is a vexatious litigant, but he contends the court erred by ordering him to post security to proceed because NAWS did not meet its burden of showing there is no

reasonable probability he will prevail on his breach of contract claim. (Code Civ. Proc., § 391.1.)<sup>1</sup> We affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

Sanders is incarcerated at Calipatria State Prison for life without the possibility of parole. He continues to seek the refund of \$21.50 for burritos and tamales he ordered and paid for in April 2005 during a fundraiser at the prison, but never received. Sanders filled out and signed a one-page preprinted form titled "AA/NA MEXICAN FOOD SALE." The form authorized the prison warden to withdraw the \$21.50 from Sanders's trust account "for the purposes stated below." The form described the "purposes" as "AA/NA Mexican food sale, 10% to the inmate welfare fund and 100% of the remaining profits will be divided and donated to AA/NA and other charities." (Some capitalization omitted.)

In October 2005 Sanders, in propria persona, sued NAWS, Alcoholics Anonymous World Services, Inc. (AAWS) and individual prison employees for breach of contract and fraud. The complaint alleged Sanders never received the food he ordered and no one would give him a refund. He sought \$21.50 in compensatory damages and \$50,000 in punitive damages.

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<sup>1</sup> Statutory references are to the Code of Civil Procedure unless otherwise specified.

<sup>2</sup> For convenience, we take some facts from our opinion in Sanders's earlier appeal in this matter. (*Sanders v. Alcoholics Anonymous World Services, Inc.* (Nov. 14, 2007, D048834) [nonpub. opn.] (*Sanders I*.)

The individual employees were dismissed. Before the dismissal, however, they moved for a prefiling order based on Sanders's status as a vexatious litigant. The court entered an order on April 17, 2006, and it requires Sanders to obtain court approval before filing any new litigation in propria persona.

NAWS and AAWS successfully demurred to the complaint. In November 2007, in *Sanders I*, we affirmed the judgment of dismissal as to the fraud count but reversed it as to the breach of contract count.

After we issued the remittitur, NAWS demurred again to the complaint. NAWS argued that Sanders could not maintain the action because he was previously declared a vexatious litigant and had not obtained the court's permission to proceed or posted security. Alternatively, NAWS moved for an order requiring Sanders to post security as a vexatious litigant. The motion was based on a September 2, 2004 order by the Los Angeles Superior Court that found Sanders to be a vexatious litigant and required him to post a \$10,000 bond to proceed in that case. Further, it was based on December 15 and February 25 orders by the Second Appellate District of the Court of Appeal in two matters (including the one in which a \$10,000 bond was required) in which the court recognized that Sanders was previously designated a vexatious litigant. The court stayed those proceedings pending Sanders's showing as to the merits. NAWS also cited the April 17, 2006 prefiling order in this case.

In a March 12, 2008 order the court overruled the demurrer. It granted the motion for security and ordered Sanders to furnish security of \$20,000 for NAWS's benefit within one month of receiving notice of the order. Sanders neither filed an opposition nor

made any appearance. On May 9, 2008, the court dismissed the matter as to NAWs because Sanders did not provide the security. Sanders moved for reconsideration, arguing he did not respond to the motion for a security order because he believed it was off calendar. He obtained no relief.

## DISCUSSION

"The vexatious litigant statutes (§§ 391-391.7) were enacted in 1963 to restrain misuse of the legal system by self-represented parties who continually relitigate the same issues. [Citations.] A vexatious litigant is someone who, while representing himself, either brought and lost at least five actions in the preceding seven years, attempted to relitigate an action he had lost, repeatedly filed meritless motions, pleadings, or papers, or had previously been declared a vexatious litigant by another court. (§ 391, subd. (b)(1)-(4).) Upon motion by a defendant in a pending action, and a showing that there is no reasonable probability a vexatious litigant will prevail in an action, the court may order the plaintiff to post security to cover the defendant's costs and attorney's fees. If the security is not posted, the action will be dismissed. (§§ 391.1-391.4. . . .)" (*Luckett v. Keylee* (2007) 147 Cal.App.4th 919, 924.)<sup>3</sup>

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<sup>3</sup> "Section 391.7, added in 1990 [citation], furnished the courts an additional resource for addressing vexatious litigant problems. This newer section operates beyond the pending case and affects the litigant's future filings. It authorizes a court to 'enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed.' " (*McColm v. Westwood Park Assn.* (1998) 62 Cal.App.4th 1211, 1216, fn. omitted.)

Sanders does not challenge the courts' designation of him as a vexatious litigant. Rather, he contends NAWS did not meet its burden of showing his breach of contract action lacks merit. In determining whether there is no reasonable probability the plaintiff will prevail, the trial court may weigh the evidence. (*Moran v. Murtaugh Miller Meyer & Nelson, LLP* (2007) 40 Cal.4th 780, 784-785.)

NAWS produced evidence it "exists to administer the Fellowship Intellectual Property Trust, which holds the trademarks for the name 'Narcotics Anonymous' and the copyrights for the Narcotics Anonymous recovery literature." There are more than 33,000 local groups using the name "Narcotics Anonymous" in 118 countries around the world. "These local groups many times are individuals that gather together to have meetings to support each individual's efforts to achieve and maintain sobriety. Some local groups create formal legal entities, where others are unincorporated associations of individuals. Local groups are permitted to use the Narcotics Anonymous name." NAWS established it was not involved in and had no knowledge of the Mexican food sale held at Calipatria prison in 2005. Further, NAWS did not know "whether a local group contacted the prison to organize the Mexican food sale. . . . NAWS does not have any [affiliation] of any nature with any of the local groups, including any local group that may have been involved in the Mexican food sale." Sanders produced no countervailing evidence.

Sanders essentially ignores NAWS's evidence. He claims that *Sanders I* establishes he had a reasonable probability of prevailing on the merits. Sanders, however, misunderstands *Sanders I*, which was a review of a demurrer ruling and

pertained only to the sufficiency of the complaint allegations. We concluded that construing the allegations of the complaint liberally, it adequately alleged the "NA" and "AA" in the food order form meant NAWs and AAWS, respectively. We explained that the order form was in the nature of a purchase order, it did not have to be signed by the party offering the food to constitute a contract, and a reasonable person presented with the form would assume NAWs and AAWS held or sponsored the food sale to raise funds for themselves. Sanders cites the statement in *Sanders I* that "[n]otably, the order form does not indicate that any party other than AAWS and NAWs solicited funds from Sanders offering him a delivery of Mexican food." (*Sanders I, supra*, D048834 at p. 7.)

*Sanders I* does not concern the substantive merits of the breach of contract action. Rather, the merits were required to be litigated through pretrial proceedings or trial. NAWs has now adduced uncontroverted evidence it was uninvolved in the food sale and there was no contract between it and Sanders, and thus NAWs is not liable to him for the refund of \$21.50. Sanders submitted no evidence suggesting NAWs was in a principal-agency relationship with the "NA" referred to on the order form. Substantial evidence supports the court's ruling that Sanders had no reasonable probability of prevailing on the merits.<sup>4</sup>

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<sup>4</sup> We deny Sanders's September 30, 2008 request for judicial notice. There is no foundation for exhibit one, and there is no indication that exhibits one through three were before the trial court. Exhibits two and three are declarations signed after Sanders filed his notice of appeal. In any event, none of the exhibits is helpful to Sanders.

DISPOSITION

The judgment is affirmed.

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McCONNELL, P. J.

WE CONCUR:

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HUFFMAN, J.

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AARON, J.